



Policies and Procedures

Subject: Accounting of Disclosures of Protected Health Information

Policy Number: HIPAA 4.7

Effective Date: 7/1/04

Entity Responsible: Division of General Counsel

Revision Date: 1/11/18

1. Purpose:

To provide instruction and guidance on how to provide an accounting of disclosures of protected health information (PHI) as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, other relevant Federal laws, and Tennessee state law.

2. Policy:

2.1: A service recipient, former service recipient, or a service recipient's legal representative has a right to receive an accounting of some disclosures of PHI made by the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) or the Regional Mental Health Institutes (RMHIs), except for disclosures of PHI listed in 2.3.

2.2: A service recipient, former service recipient or a service recipient's legal representative may file a written request for an accounting of disclosures of PHI made by TDMHSAS or the RMHIs. This request may be for no more than six (6) years prior to the date on which the accounting is requested.

2.3: TDMHSAS and the RMHIs must provide an accounting of some disclosures of PHI made during the time period for which the accounting was requested. However, the following disclosures will not be provided in the accounting:

2.3.1: Disclosures made to carry out treatment, payment, and health care operations;

- 2.3.2: Disclosures made to the individual to whom the PHI pertains;
- 2.3.3: Disclosures incident to a use or disclosure otherwise permitted so long as the minimum necessary standard has been followed;
- 2.3.4: Disclosures made pursuant to a valid authorization to release PHI to another individual or entity, where such authorization was given by the service recipient, former service recipient; or service recipient's legal representative;
- 2.3.4: Disclosures made for the facility directory, or to any person involved in the service recipient's or former service recipient's care;
- 2.3.5: Disclosures made for national security or intelligence purposes, pursuant to 45 C.F.R. § 164.512(k)(2), including protective services for the President of the U.S. or others authorized by 18 U.S.C. §3056;
- 2.3.6: Disclosures made to a correctional institution or law enforcement officials; pursuant to 45 CFR § 164.512(K)(5). *See* TDMHSAS HIPAA Policy 4.6.
- 2.3.7: Disclosures made as part of a limited data set;
- 2.3.8: Disclosures that occurred prior to HIPAA compliance date of April 13, 2003.
- 2.4: The TDMHSAS or RMHI must act on the request for accounting within 60 days after receipt of the written request. If the TDMHSAS or RMHI is unable to comply within 60 days, there may be one (1) extension for a maximum of thirty (30) days provided that TDMHSAS or RMHI provides the requester a written statement explaining the delay, and the requester is given a new date within the extended thirty (30) days that the accounting will be provided.
- 2.5: Any accounting TDMHSAS or the RMHI provides must be in writing and must include (1) the date of the disclosure, (2) the name of the entity or person who received the PHI, and if known, the address of such entity or person, and (3) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis of the disclosure.
 - 2.5.1: If TDMHSAS or the RMHI has made multiple disclosures of PHI to the same person or entity for a single purpose, the accounting may with respect to such multiple disclosures provide (1) the information described in 2.5 for the first disclosure during the accounting period, (2) the frequency or number of the disclosures made during the accounting

period, and (3) the date of the last such disclosure during the accounting period.

- 2.6: An accounting provided by TDMHSAS or the RMHI must also include the disclosure of PHI by a TDMHSAS or a RMHI business associate if this PHI was originally disclosed by TDMHSAS or the RMHI to the business associate. *See* TDMHSAS HIPAA Policy 4.3.
- 2.6: The TDMHSAS or RMHI must provide the first accounting, in any twelve (12) month period, without charge. After this time period, the TDMHSAS or RMHI may impose a reasonable cost-based fee for each subsequent request by the same individual within that twelve (12) month time period, provided the TDMHSAS or RMHI informs the requester in advance of the fee and provides the requester with an opportunity to withdraw or modify their request for a subsequent accounting.
- 2.7: If health oversight agency or law enforcement official provides a written statement indicating that an accounting of disclosures that contains disclosures made to them is reasonably likely to impede their activities, the TDMHSAS or the RMHI must temporarily suspend the right to an accounting which includes these disclosures for the time specified by the health oversight agency or law enforcement official in their written statement. At the conclusion of the suspension, the requester should be given an accounting of disclosures to health oversight agency or law enforcement official if not included in the accounting initially provided to them.
- 2.8: If a health oversight agency or law enforcement official provides an oral statement indicating that providing an accounting of disclosures that contains disclosures made to them would reasonably likely impede the agency's activities, TDMHSAS or the RMHI must document the statement, including the identity of the agency or official making the statement, temporarily suspend the individual's right to an accounting of disclosures subject to the statement, and limit the suspension to no longer than thirty (30) days from the date of the oral statement, unless a written statement is provided during that time. At the conclusion of the suspension, the requester should be given an accounting of disclosures to the health oversight agency or law enforcement official if not included in the accounting initially provided to them.
- 2.9: All disclosures of PHI must be recorded on a disclosure log kept in the service recipient's record. All accountings prepared and provided to the requester must also be recorded in the disclosure log kept in the service recipient's record.

- 2.10: A copy of the written accounting must also be placed in the service recipient's record. Written accountings are to be retained for ten (10) years from the date of creation.

3. Procedure/ Responsibility:

- 3.1: When TDMHSAS or RMHI employee receives a written request from a service recipient, former service recipient, or service recipient's legal representative for an accounting of PHI disclosures, the employee must forward that request to the TDMHSAS Privacy Officer or the RMHI Privacy Officer. If verbal request is received, the employee must inform that state law requires that the request be made in writing.
- 3.2: If the requester requires assistance in completing a written request, the TDMHSAS or RMHI shall provide assistance. The written request must then be delivered to the TDMHSAS Privacy Officer or the RMHI Privacy Officer.
- 3.3: The TDMHSAS Privacy Officer or RMHI Privacy Officer must provide requester with the accounting within sixty (60) days after receiving the request. If the respective Privacy Officer is unable to comply within 60 days, there may be one (1) extension for maximum of thirty (30) days. The requester must be notified in writing within the original sixty (60) days of the extension, and such writing must state reason(s) for the delay and give a new date within the extended thirty (3) days that the accounting will be provided.
- 3.6: The TDMHSAS or the RMHI must provide the first accounting, in any twelve (12) month period without charge. Afterwards, the TDMHSAS or the RMHI may impose a reasonable cost-based fee for each subsequent request by the same individual in the same twelve (12) month period provided that the requester is informed of the fee in advance and the requester has the opportunity to withdraw or modify their request in order to reduce or avoid the fee.
- 3.7: The TDMHSAS Privacy Officer or the RMHI Privacy Officer must provide a written accounting of some disclosures of PHI which occurred during the six (6) year period, or shorter time period if requested, prior to the date of the request for an accounting. This accounting must also include disclosures to business associate of the TDMHSAS or the RMHI subject to the limitations described above.
- 3.8: The content of the accounting should be based off of information provided in the disclosure log. The accounting must be in writing and a copy placed in the service recipient's record. The accounting must include (1) the date of the disclosure, (2) the name of the individual or entity who received the PHI, and if known, their address, (3) a brief description of PHI disclosed, and (4) a brief statement of the

purpose of the disclosure that reasonable informs the requester of the basis for the disclosure.

3.9: The TDMHSAS or the RMHI Privacy officer/ designee who disclose PHI must document all disclosures on a disclosure log kept in the service recipient's record. A copy of the written request for disclosure must also be placed in the service recipient's record. Disclosures of PHI may also be entered into an electronic log. This disclosure log should be kept for a minimum of six (6) years and this disclosure log shall be placed in the service recipient's file. *See* TDMHSAS HIPAA Policies 4.1, 4.3, 4.4, 4.6.

3.9.1: The disclosure log must include (1) date of the disclosure, (2) name of the individual of entity who received the PHI, and if known, their address, (3) a brief description of PHI disclosed, and (4) a brief statement of the purpose of the disclosure that reasonably describes the basis of the disclosure.

3.10: All accountings prepared and given to the requester must also be recorded in the disclosure log kept in the service recipient's record.

3.11: A copy of the written accounting must also be placed in the service recipient's record.

3.12: A copy of the written accounting is to be retained for ten (10) years from the date of creation.

4. Other Considerations:

4.1: Authority:

45 CFR §§ 164.512(k)(2), (k)(3), (k)(5); 164.514(e)(2); 164.528, and 164.530(j).

Approved:



Commissioner

1-11-18

Date